

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 44/JP/2024  
निर्धारण वर्ष / Assessment Years : 2012-13

Smt. Rajni Gupta 09, Keshav Nagar, Alwar	बनाम Vs.	ACIT, Central Circle, Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFJPG 9455 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. P. C. Parwal, CA  
राजस्व की ओर से / Revenue by : Sh. Arvind Kumar, CIT

सुनवाई की तारीख / Date of Hearing : 08/05/2024  
उदघोषणा की तारीख / Date of Pronouncement: 04/06/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is because the assessee dissatisfied with the order of the Commissioner of Income Tax (Appeals)-4, Jaipur dated 13/12/2023 [here in after Id. CIT(A) ] for assessment year 2012-13. The said order of the Id. CIT(A) arise as against the order dated 28.12.2019 passed under section 153A r.w.s 143(3) of the Income Tax Act, by ACIT, Central Circle, Alwar the assessee preferred the first appeal.

2. In this appeal, the assessee has raised following grounds: -

*"1. The Id. CIT(A) has erred on facts and in law in upholding the validity of order passed by AO u/s 153A of the Act.*

*2. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 14,75,000/- u/s 69 of the Act on account of unexplained investment in agricultural land situated at village Mehrampur, Kishangarh Bass, Alwar.*

*3. The appellant craves to alter, amend and modify any ground of appeal.*

*4. Necessary cost be awarded to the assessee."*

3. Succinctly, the fact as culled out from the records is that a search and seizure action u/s 132 of the Income Tax Act, 1961 ("the Act") was carried out by the Income Tax Department on the members/concerns of Gupta Group, Alwar on 22/09/2017 of which the Assessee is one of the members. During the course of the above referred action(s), cash, jewellery, valuables, stock-in-trade, documents, books of account and/or loose papers were found and/or seized from the premises of the members of the Gupta Group of which one such member happens to be the Assessee. Thereafter, the jurisdiction over the case was assigned to Central Circle, Alwar by the Pr. Commissioner of Income Tax, Alwar by means of an Order u/s 127 of the Act circulated vide Pr.CIT/Alwar/ITO(Tech.)/T-1015Trf of case u/s 127/2016-17/2242 dated 28/11/2017. Notice under section 153A of the Act was issued and served upon the Assessee on 09/10/2018

requiring her to file a true and correct return of income as prescribed under Rule 12 of the Income Tax Rules, 1962 within 15 days of the service of the said notice. The assessee filed its return of income u/s 139 on 22/3 / 2013 vide Ack. No. 585128700220313 declaring income of Rs. 4,21,460/- In response to the said notice, a return declaring an income of Rs. 4,21,460/ was e-filed by the Assessee vide acknowledgement No. 372274121021118 on 02.11.2018. The Assessee primarily derives its income from Business, House Property Income and income from Other Sources.

3.1 The proceedings of assessment of income were initiated by issuing of notices u / s 143(2) of the Act on 08.08.2019 & 142(1) of the Act on 16-09-2019 and served online on the e-mail of the assessee. Notice u/s 142(1) dated 16-09-2019 was issued to the assessee and information and details pertaining to the case of the Assessee relevant to assessment of his income were called for u / s 142(1) of the Act by means of a questionnaire.

3.2 During the course of search, the documents marked as page no. 55 to 58 of the Exhibit – 14 seized from the residential premise of Sh. Madan Lal Gupta situated at 32B, Chatri Wala Kuan, Pratap Bass, Alwar. As per the document the assessee has purchased a land in Khasra no. 33 situated

at village-Mehrampur, Kishangar Bass, Alwar for a consideration of Rs. 14,75,000/-. During the course of assessment proceedings, the assessee vide notice dated 08/12/2019 was asked to show cause to why the investment made in the property may not be held as unexplained investment and the amount of Rs. 14,75,000/- may not be added in total income for the year under consideration. The Id. AO fairly noted that this query has been raised in AY 2013-14 inadvertently, however, the transaction is related to AY 2012-13. Therefore, assessee required to give your justification as asked. In response, the A/R of the assessee filed reply on 01/10/2019.

3.3 While going through the reply the Id. AO noted that payment of Rs. 13,25,000/- was made through cheque on 30.01.2012 and amount of Rs. 1,50,000/- was paid on 27.01.2012 in cash. In support, cash book for the year has been submitted and ledger a/c of Mehrampur land in the books of the assessee was also furnished. In the cash book the amount of Rs. 1,50,000/- is credited against which description 'agriculture land mehrampur being mitti Filling and other exp.' is mentioned. Similarly, in the ledger of the land furnished by the assessee is showing debit entry of Rs. 1,50,000/- with same narration. From the reply and supporting documents furnished by

the assessee itself, it is quite clear that the amount of Rs. 1,50,000/- was not paid to Mr. Manoj Chachan (seller) but the amount has been expended for other purposes. The assessee is trying to justify the expense amount with the payment made against the land. Thus, the reply to that extent is found contradictory and totally not acceptable. Further, regarding payment of Rs. 13,25,000/- made through cheque it is noticed that such payment was actually made through cheque. But, the registered deed showing payment of Rs. 14,75,000/- in cash. The assessee could not verify this fact from the seller and nothing substantial could put forth that could justify the claim of the assessee of payment of Rs. 14,75,000/- was not in cash, typographical error and/or the payment of Rs. 13,25,000/- made through cheque are related to this land only and this payment includes the amount of Rs. 14,75,000/-. The assessee failed to put forth any plausible explanation regarding the sources of investment made in the property in cash. Thus, From the material available on record and the reply furnished by the assessee it appears that the amount of Rs. 14,75,000/- was made in cash in addition of Rs. 13,25,000/- and the assessee failed to explain the sources of the same. In view of the above discussion, it is held that the assessee has made unexplained investment of Rs. 14,75,000/- in purchase of immovable property within the meaning of provisions of section 69 of the

Act and addition of Rs.14,75,000/- made in the total income of the assessee for the year under consideration.

4. Aggrieved from finding so recorded and the contention of the assessee was not appreciated by the Id. AO, the assessee preferred the first appeal before the Id. CIT(A). The assessee challenged the legality of the addition and on the merits that the addition is not warranted. Apropos to these grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below for the sake understanding his views:

"5.5 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order, the remand report and the rejoinder submitted by the appellant. The contentions/submissions of the appellant are being discussed and decided as under:-

During the course of search, the documents marked as page no. 55 to 58 of Exhibit-14 were seized. As per the document the appellant has purchased a land in Khasra no. 33 situated at village- Mehrampur, Kishangar Bass, Alwar for a consideration of Rs. 14,75,000/-. The Id. A / R of the appellant filed reply on 01/10/2019 which is reproduced in the assessment order is hereunder:-

"With reference to your letter dated 08.12.2019 regarding page no. 55-58 of Exhilut 14 wherein assessee has purchased a property in khasra no. 33, village Mehrampur, Alwar. For consideration of Rs. 14,75,000/-. With regard to source of investment it is submitted that payment for the same has been made as under.

-vide cheque dated 30.01.2012 amounting to Rs. 13,25,000/-

-cash payment on 27.01.2012 amounting to Rs. 1,50,000/-

It is further submitted that in agreement due to mistake, it has been mentioned that assessee has paid full consideration cash. However, assessee has paid 1,50,000/- first on 27.01.2012 and then paid the balance consideration of Rs. 13,25,000/- through cheque. Considering the fact that part payment was made in cash and part payment was made through cheque, there exist a typographical error in the agreement drafted.

Assessee has raised unsecured loan from the parties appealing in the bank book before purchasing the above property. Confirmation of these parties is already been submitted to your goodself. Copy of cash book, bank book and bank statement highlighting the transaction is enclosed."

From perusal of page no. 56 of the seized document that is page no. 3 of the registered deed, it is clear that the payment of Rs. 14,75,000/- was made in cash. But, the appellant gave its justification that it was a typographical error.

Further, it is noticed in the assessment order that in the cash book the amount of Rs. 1,50,000/- is credited against which description 'agriculture land mehrampur being mitti filling and other exp/' is mentioned. Similarly, in the ledger of the land furnished by the appellant is showing debit entry of Rs. 1,50,000/- with same narration. From the reply and supporting documents furnished by the appellant herself, it is quite clear that the amount of Rs. 1,50,000/- was not paid to Mr. Manoj Chachan (seller) but the amount has been expended for other purposes. The appellant tried to justify the expense amount with the payment made against the land. Thus, the reply was found contradictory and totally not acceptable.

Further, regarding payment of Rs. 13,25,000/- made through cheque it is noticed that such payment was actually made through cheque. But, the registered deed showing payment of Rs. 14,75,000 / (-) in cash. The appellant could not verify this fact from the seller and no evidence substantial could justify the claim of the assessee of payment of Rs. 14,75,000/- was not in cash, typographical error and/or the payment of Rs. 13,25,000/- made through cheque are related to this land only and this payment includes the amount of Rs. 14,75,000/-. The appellant failed to put forth any plausible explanation regarding the sources of investment made in the property in cash.

During the appellate proceedings also the appellant has not been able to prove that the two agreements referred to the same payment and that there was typographical error in the agreement seized and that the payment referred in the agreement seized included the payment of rupees 13,25,000 as referred in the earlier agreement.

It is noted that the appellant did not come with clean hands as during the assessment proceedings the appellant made a claim that the payment of rupees 1,50,000 was made to the sellers in cash whereas from the cash book and ledger of the appellant herself which were submitted by the appellant herself it was found that the payment of rupees 1,50,000 was not done to the sellers but were spent by the appellant herself for mitti filling and other exp.

It is held by the Hon'ble Supreme Court in the Ramjas Foundation and another vs UOI and another in CIVIL APPEAL [<https://indiankanoon.org/doc/265836/>] as under:- NO.6662 OF 2004

"14. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in other courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case. In *Dalglish v. Jarvie* 2 Mac. & G. 231, 238, Lord Langdale and Rolfe B. observed: "It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction, and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward. In *Castelli v. Cook* (1849) 7 Hare, 89, 94 Wigram V.C. stated the rule in the following words: "A plaintiff applying ex parte comes under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go." In *Republic of Peru v Dreyfus Brothers & Company* 55 L.T. 802, 803. Kay J. held as under:

"I have always maintained, and I think it most important to maintain most strictly, the rule that, in ex parte applications to this Court, the utmost good faith must be observed. If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith in the Court when ex parte applications are made."

The same rule was restated by Scrutton L., J in *R. v. Kensington Income Tax Commissioner* (1917) / K.B. 486. The facts of that case were that in April, 1916, the General Commissioners for the Purposes of the Income Tax Acts for the district of Kensington made an additional assessment upon the applicant for the year ending April 5, 1913, in respect of profits arising from foreign possessions. On May 16, 1916, the applicant obtained a rule nisi directed to the Commissioners calling upon them to show cause why a writ of prohibition should not be awarded to prohibit them from proceeding upon the assessment upon the ground that the applicant was not a subject of the King nor resident within the United Kingdom and had not been in the United Kingdom, except for temporary purposes, nor with any view or intent of establishing her residence therein, nor for a period equal to six months in any one year. In the affidavit on which the rule was obtained the applicant stated that she was a French subject and resident in France and was not and had not been a subject of the United Kingdom nor a resident in the United Kingdom: that during the year ending April 5, 1913, she was in the United Kingdom for temporary purposes on visits for sixty- eight days; that she spent about twenty of these days in London at her brother's house, 213, King's Road, Chelsea, generally in company with other guests of her brother, that she was also in the United Kingdom during the year ending April 5, 1914, for temporary purposes on visits, and spent part of the time at 213, King's Road aforesaid, and that since the month of November, 1914, she had not been in the United Kingdom. From the affidavits filed on behalf of the Commissioners and of the surveyor of taxes, who showed cause against the rule nisi, and from the affidavit of the

applicant in reply, it appeared that in February, 1909, a leasehold house, 213, King's Road, Chelsea, had been taken in the name of the applicant's brother. The purchase-money for the lease of the house and the furniture amounted to 40001., and this was paid by the applicant out of her own money. The accounts of household expenses were paid by the brother and subsequently adjusted between him and the applicant. The Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Divisional Court observed that the Court, for its own protection is entitled to say "we refuse this writ of prohibition without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us". On appeal. Lord Cozens-Hardy M.R. and Warrington L.J. approved the view taken by the Divisional Court Scrutton L.J. who agreed that the appeal should be dismissed observed.

"and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - facts, not law. He must not misstate the law if he can help it - the court is supposed to know the law But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

15. The above noted rules have been applied by this Court in large number of cases for declining relief to a party whose conduct is blameworthy and who has not approached the Court with clean hands - Hari Narain v. Badri Das AIR 1963 SC 1558, Welcome Hotel v. State of A.P. (1983) 4 SCC 575. G. Narayanaswamy Reddy v. Government of Karnataka (1991) 3 SCC 261. SP Chengalvaraya Naidu v. Jagannath (1994) 1 SCC 1. A.V. Papayya Sastry v. Government of AP (2007) 4 SCC 221, Prestige Lights Limited v. SBI (2007) 8 SCC 449, Sunil Poddar v. Union Bank of India (2008) 2 SCC 326, K.D. Sharma v. SAIL. (2008) 12 SCC 481. G. Jayashree v Bhagwandas S Patel (2009) 3 SCC 141 and Dalip Singh v. State of U.P (2010) 2 SCC 114. In the last mentioned judgment, the Court lamented on the increase in the number of cases in which the parties have tried to misuse the process of Court by making false and/or misleading statements or by suppressing the relevant facts or by trying to mislead the Court in passing order in their favour and observed:

"For many centuries Indian society cherished two basic values of life ie. "satya" (truth) and "ahimsa" (non-violence) Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who

touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

(emphasis supplied)

16. In our view, the appellants are not entitled to any relief because despite strong indictment by this Court in Ramjas Foundation v. Union of India, they deliberately refrained from mentioning details of the cases instituted by them in respect of the land situated at Sadhora Khurd and rejection of their claim for exemption under clause (d) of notification dated 13.11.1959 by the High Court and this Court".

The appellant submitted the confirmation from the seller during the appellate proceedings which were forwarded to the learned assessing officer for the remand report regarding the additional evidences. In the remand report the learned assessing officer has not commented specifically on the confirmations of the sellers of the property. However I am not inclined to accept the claim that there is a typographical error merely on the basis of the affidavits of the sellers specifically in view of the fact that the sellers of the property are also interested parties and the evidence of the interested parties is generally considered weaker and the same is not sufficiently explaining the multiple issues in the case. The amounts in the two agreements are different and the mode of payment in the two agreements are different and thirdly and importantly the appellant did not come with clean hands as during the assessment proceedings the appellant made a claim that the payment of rupees 1,50,000 was made to the sellers in cash whereas from the cash book and ledger of the appellant herself which were submitted by the appellant herself it was found that the payment of rupees 1,50,000 was not done to the sellers but were spent by the appellant herself for mitti filling and other exp. Further, the agreement was notarised by authorised notary person Sh. Dinesh Bhargav vide LA. No. 131/D.R./94Li300/- Registered No, 518 dated 27.03.2012 and was duly registered in the O / o the deputy registrar Kishangarh Bass, Alwar. These issue remains unexplained. The statements of the parties are self serving Further there is no discussion regarding Cheque payments in the seized document.

In view of the above discussion the explanation of the appellant regarding the cash payment of rupees 14,75,000 as mentioned in the seized agreement cannot be accepted and the same is hereby rejected and it is held that the said payment of cash is different from the cheque payment mentioned in the other agreement.

Accordingly this ground of appeal is hereby dismissed."

5. The assessee, aggrieved from that order of the Id. CIT(A) the present lies before us. Here also the assessee challenged the legality of the

addition and based on the merits of the case contending that her facts also do not warrant the addition in her hands as her income. To support the contention, her learned counsel filed the written submissions which is reproduced here in below so as to deal the contentions raised;

*Facts & Submission:-*

1. The assessee had filed the return of income u/s 139 on 22.03.2013 declaring total income of Rs.4,21,460/- (PB 22). A search was carried out u/s 132 on the members/concerns of Gupta Group, Alwar on 22.09.2017 of which assessee is one of the member. The AO served the notice u/s 153A of the Act on the assessee on 09.10.2018 requiring her to file the return of income. In response to the same assessee filed the return of income declaring same total income of Rs.4,21,460/- (PB 23-25).

2. In search a sale deed marked as Page No.55 to 58 of Exhibit-14 was found (PB 37-43). According to the sale deed dt. 27.03.2012 assessee has purchased a land in Khasra No.33 situated at village Mehrampur, Kishangar Bass, Alwar for consideration of Rs.14,75,000/-. In the sale deed the consideration is stated to be paid by cash whereas assessee has only paid Rs.1,50,000/- in cash on 27.01.2012 and the balance payment of Rs.13,25,000/- cleared from the bank account of assessee on 30.01.2012 (PB 27). The AO held that assessee failed to put forth any plausible explanation regarding the source of investment made in the property in cash which is in addition of Rs.13,25,000/- made through banking channel. Accordingly he made addition of Rs.14,75,000/- u/s 69 of the Act on account of unexplained investment in purchase of immovable property.

3. The Ld. CIT(A) at Pg 11 in last para held that incriminating material has to be necessarily construed to be in the nature of prima facie evidence only. Such evidence may or may not turn out to be conclusive evidence after verification/enquiry during assessment proceedings. Applying the Haydens Rule of Mischief, it is held that mere fact that such entries are recorded in the books of accounts or some fabricated or colorful documents have already been accepted as correct, it will not prevent such material or entry from the incriminating, if the circumstances suggest otherwise. Accordingly the ground of assessee was dismissed.

4. It is submitted that the assessment for the year under consideration is a concluded assessment in as much as no notice u/s 143(2) was issued to the assessee within 6 months from the end of the FY in which return was filed, i.e. on

or before 30.09.2013. The search took place after this date, i.e. on 22.09.2017. The sale deed found in search is duly recorded in the books of accounts. It is not an incriminating material. Hence the addition made by the AO on the basis of transaction recorded in books of accounts in respect of concluded assessment in the assessment framed u/s 153A is illegal & bad in law. Reliance in this connection is placed on the following cases:-

PCIT Vs. Abhisar Buildwell Pvt. Ltd. (2023) 454 ITR 212 (SC)

The head note of the decision reads as under:-

*Search and seizure—Assessment under s. 153A—Scope vis-a-vis incriminating material—Foundation for making search assessments under ss. 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search—As per the second proviso to s. 153A, the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under s. 132 or making of requisition under s. 132A, as the case may be, shall abate—As per sub-s. (2) of s. 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-s. (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-s. (1) of s. 153A, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-s. (1), shall stand revived with effect from the date of receipt of the order of such annulment by the CIT—Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate—Intention does not seem to be to reopen the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search—Thus, if during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the ‘total income’ taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income—However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under ss. 147/148, subject to fulfilment of the conditions mentioned in ss. 147/148—If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law—If the submission on behalf of the Revenue is accepted, in that case, second proviso to s. 153A and sub-s. (2) of s. 153A would be redundant.*

PCIT Vs. S.S. Con Build (P.) Ltd. (2023) 293 Taxman 491 (SC)

SLP dismissed against impugned order of High Court that where no incriminating material was found during search operations pertaining to relevant AY in question, AO could not have proceeded to frame assessment u/s 153A.

PCIT Vs. King Buildcon (P) Ltd. (2023) 227 DTR 393 (SC)

In view of the fact that during the search no incriminating material was found, no addition could be made in the assessment u/s 153A in respect of completed/unabated assessments.

PCIT Vs. Kutch Salt and Allied Industries Ltd. (2023) 294 Taxman 124 (Guj.) (HC)

Where no incriminating material was found during search, no addition can be made in respect of completed/unabated assessment.

PCIT Vs. Rajesh Mohanbhai Patel (2023) 294 Taxman 279 (Guj.) (HC)

Where assessment of assessee for relevant AY was completed and subsequently search was conducted at premises of assessee in pursuance to which AO passed assessment order u/s 143(3) r.w.s. 153A(1)(b) and made addition u/s 68 on account of alleged bogus long term capital gain, since no incriminating material was found during course of search with regard to issue of addition made in assessment order, impugned addition was to be set aside.

5. The Ld. CIT(A) has considered the sale deed as incriminating document by not appreciating that in the sale deed consideration of Rs.14,75,000/- has been mistakenly mentioned as received in cash whereas out of it Rs.13,25,000/- was paid by cheque which is verifiable from the bank statement. Therefore, to hold that sale deed is incriminating document by applying the Haydens Rule of Mischief is prima facie incorrect.

In view of above, assessment order passed by AO be quashed.

#### Ground No.2

*The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.14,75,000/- u/s 69 of the Act on account of unexplained investment in agricultural land situated at village Mehrampur, Kishangarh Bass, Alwar.*

#### *Facts:-*

1. The assessee entered into an agreement for purchase of agriculture land from Sh. Manoj Kumar on 27.01.2012 (PB 34-35) according to which assessee paid Rs.13,25,000/- vide cheque no. 095454 dt. 27.01.2012. This cheque cleared from the bank account of assessee on 30.01.2012 (PB 27). Along with the sale agreement Sh. Manoj Kumar has also given an affidavit dt. 27.01.2012 (PB 36) stating that he has appointed the assessee as his POA holder and also executed a Will in favour of the assessee.

2. On the basis of the POA, assessee executed the sale deed on 27.03.2012 (PB 37-43). The sale deed was executed by the assessee as POA holder of Sh. Manoj Kumar in her favour. The reference of assessee being appointed as POA holder is mentioned in the sale deed (PB 39). However, mistakenly in the sale deed the consideration of Rs.14,75,000/- has been stated to have been received in cash. The fact that assessee only paid Rs.1,50,000/- in cash on 27.01.2012 and balance Rs.13,25,000/- by cheque was explained to the AO in reply dt. 09.12.2019 (PB 29-30). In support of the fact that Rs.1,50,000/- was paid by cash, cash book of the assessee as seized in search was provided by the AO in the remand proceedings (PB 16-19). Assessee also filed affidavit of Manoj Kumar dt. 17.6.2023 (PB 44) where he categorically stated that he has sold the land for Rs.13,25,000/- which is paid to him by cheque.

3. In the remand report dt. 09.10.2023 (PB 7-8), AO observed that the sale deed is notarized by Sh. Dinesh Bhargav having registration no.518 dt. 27.03.2012 and it was duly registered by the sub-registrar. Therefore, without considering the sale agreement and the affidavit of Manoj Kumar he observed that the contention of assessee is vague, baseless, unjust and unacceptable. Accordingly AO substantiated the addition of Rs.14,75,000/- made by him u/s 69 of the Act.

4. The Ld. CIT(A) at Pg 17 observed that in the cash book Rs.1,50,000/- is paid with the description 'agriculture land Mehrampur being mitti filling & other expenses' and thus it is not paid to Manoj Kumar. Further Rs.13,25,000/- has been paid by cheque but registered deed shows payment of Rs.14,75,000/- in cash. The claim that there is a typographical error merely on the basis of affidavit of seller is not acceptable since the seller is also interested party. The amount in the sale agreement and sale deed are different, mode of payment are different and assessee has not come with clean hands as during assessment proceedings it is claimed that Rs.1,50,000/- was paid to sellers in cash whereas as per the cash book it was not paid to the seller but spent on mitti filling and other expenses. Accordingly the addition made by AO is confirmed.

*Submission:-*

1. It is submitted that the lower authorities have not properly appreciated the facts. In fact assessee purchased the land from Sh. Manoj Kumar for Rs.13,25,000/- as per agreement dt. 27.01.2012 for which payment is made by cheque. Assessee further incurred expenses on mitti filling and other expenses through Manoj Kumar and therefore this amount is not a part of the sale agreement. This amount was spent by the assessee on development of land, therefore, in the cash book seized in search, against such amount narration of 'mitti filling and other expenses-land Maharpur' is mentioned. In the reply filed by the assessee to AO nowhere it is stated that Rs.1,50,000/- is paid to Sh. Manoj Kumar. If the agreement and the cash book is viewed in totality, it is evident that Sh. Manoj Kumar was paid Rs.13,25,000/- by cheque and

Rs.1,50,000/- was incurred against mitti filling and other expenses. It is for this reason that there is a overwriting in the sale deed where the amount of Rs.13,25,000/- has been changed to Rs.14,75,000/-.

2. Ofcourse in the sale deed it is written that amount has been paid in cash but it is only a typographical mistake in as much as out of it Rs.13,25,000/- was paid by cheque and this fact is evident when the sale agreement and the sale deed are read conjointly. The fact of Rs.13,25,000/- having been paid by cheque is not disputed by the lower authorities. However the presumption that the cash of Rs.14,75,000/- mentioned in the sale deed is over and above the amount of Rs.13,25,000/- paid by cheque is farfetched and without any corroborative material on record.

3. The Ld. CIT(A) has relied on the decision of Supreme Court in case of Ramjas Foundation & Anr. Vs. UOI where it is observed that a person who does not come to the court with clean hands/ whose conduct is blameworthy is not entitled to relief. This decision rather support the case of assessee in as much as the assessee has brought on record all the evidences, she has come up with clean hands and her conduct is not blameworthy. Even the seller has filed the affidavit where he admitted having received Rs.13,25,000/- by cheque and affirmed that he has not received any amount in cash. Also to the best of the knowledge of assessee, no action has been taken by the department against the seller of the land. Therefore, only because Sh. Manoj Kumar is an interested party cannot be a ground to discard the affidavit filed by him without controverting the same. Hon'ble Supreme Court in case of Mehta Parikh & Co. Vs. CIT 30 ITR 181 at Pg 187 has held that the rejection of affidavit filed by the assessee is not justified unless the deponent has either been discredited in cross examination or has failed to produce other supporting evidence when called upon to do so. This is also reiterated by Hon'ble ITAT, Jaipur Bench in case of Kuldeep Chand Garg Vs. ITO 37 Taxworld 127 where it held that contents of duly sworn and affirmed affidavit are to be accepted as such unless the deponents are examined to establish otherwise. Thus it is evident from the fact that sale consideration of the land mentioned in the sale deed is duly recorded in the books of accounts of assessee.

In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.”

6. Her learned Counsel supported the written submission with the following evidence / records / decisions:

S. No.	Particulars	Pg No.	Filed before AO/ CIT(A)

1.	Copy of submission filed before Ld. CIT(A)	1-6	CIT(A)
2.	Copy of remand report dt. 09.10.2023 submitted by AO to Ld. CIT(A)	7-19	Both
3.	Copy of assessee's reply to Ld. CIT(A) in response to above remand report	20	CIT(A)
4.	Copy of index of paper book filed before Ld. CIT(A)	21	CIT(A)
5.	Copy of acknowledgment of return dt. 22.03.2013 filed u/s 139(1) of IT Act	22	Both
6.	Copy of acknowledgment of return dt. 02.11.2018 along with computation of total income filed u/s 153A of IT Act	23-25	Both
7.	Copy of reply dt. 22.11.2019 filed during the course of assessment proceedings	26	Both
8.	Copy of bank statement of Bank of India	27-28	Both
9.	Copy of reply dt. 09.12.2019 filed during the course of assessment proceedings	29-31	Both
10.	Copy of ledger account of Agricultural Land Mehrampur along with payment voucher	32-33	Both
11.	Copy of agreement and affidavit dt. 27.01.2012 regarding the purchase of land	34-36	Both
12.	Copy of sale deed dt. 27.03.2012 of the land purchased	37-43	Both
13.	Copy of affidavit dt. 17.06.2023 of the seller stating that actual consideration received is Rs.13,25,000/- only	44-45	Both

7. In addition to the material so placed here in above the learned counsel before us at the time of hearing of the appeal vehemently argued that considering the decision of the apex court in the case of PCIT Vs. Abhisar Buildwell Private Limited 454 ITR 212(SC) cannot be made in the hands of the assessee as the sale deed found during the search which is duly recorded in the books of accounts of the assessee and as such as there is no incriminating material no addition can be made. As regards the merits of the case he submitted that the assessee purchased the land from Sh. Manoj Kumar for Rs.13,25,000/- as per agreement dt. 27.01.2012 for which payment is made by cheque. Assessee further incurred expenses on

mitti filling and other expenses through Manoj Kumar and therefore this amount is not a part of the sale agreement. This amount was spent by the assessee on development of land, therefore, in the cash book seized in search, against such amount narration of 'mitti filling and other expenses-land Maharpur' is mentioned. In the reply filed by the assessee in the assessment proceeding nowhere it is stated that Rs.1,50,000/- is paid to Shri Manoj Kumar. If the agreement and the cash book is viewed in totality, it is evident that Shri Manoj Kumar was paid Rs.13,25,000/- by cheque and Rs.1,50,000/- was incurred against mitti filling and other expenses for and behalf of the assessee. It is for this reason that there is a overwriting in the sale deed where the amount of Rs.13,25,000/- has been changed to Rs.14,75,000/-. Even the seller has filed the affidavit where he admitted having received Rs.13,25,000/- by cheque and affirmed that he has not received any amount in cash. He at bar submitted that no adverse action taken by the department against the seller of the land. Therefore, only because Shri Manoj Kumar is an interested party cannot be a ground to discard the affidavit filed by him without controverting the same. The apex court in the case of Mehta Parikh & Co. Vs. CIT 30 ITR 181 at Pg 187 held that the rejection of affidavit filed by the assessee is not justified unless the deponent has either been discredited in cross examination or has failed to

produce other supporting evidence when called upon to do so. Thus, supported sale consideration of the land mentioned in the sale deed which is duly recorded in the books of accounts of the assessee.

8. The Id DR is heard who relied on the findings of the lower authorities. The Id. DR invited our attention to the facts that the issue which the assessee is raising are already decided based on the reasoning given in the order of the Id. CIT(A). The transaction of property as recorded in the deed shows that the assessee has paid cash whereas the assessee submit that it has both component of cash and cheque. As regards the affidavit and confirmation of the seller the Id. AO remained silent and the Id. CIT(A) did not agree with the contention that the deed contains error mentioning of mode of payment. Thus, the Id. DR submits that the order of the Id. CIT(A) is fair and reasoned be sustained.

9. We have heard the rival contentions and perused the material placed on record. Ground no. 2 raised by the assessee challenges the action of the Id. CIT(A) in confirming the addition of Rs. 14,75,000/- u/s. 69 of the Act as unexplained investment of land made by the assessee. The brief facts as emerges from the orders of the lower authority that the assessee is one of

the members of the group who have been searched under section 132 of the Act on 22.09.2017. The name of the business group to which the assessee is considered as member is Gupta Group of Alwar. In the process of search sale deed at Page No.55 to 58 of Exhibit-14 was found (APB 37-43). As per the content of the sale deed dated 27.03.2012 it is evident that the assessee purchased a land in Khasra No.33 situated at village Mehrampur, Kishangar Bass, Alwar for consideration of Rs.14,75,000/-. As in that sale deed the consideration is stated to be paid by cash whereas assessee has only paid Rs.1,50,000/- in cash on 27.01.2012 and the balance payment of Rs.13,25,000/- cleared from the bank account of assessee on 30.01.2012 (APB 27). The Id. AO held that assessee has no support or clear explanation regarding the source of investment made in the property in cash. The Id. AO also contended that the cash component is in addition of Rs.13,25,000/- made through banking channel. Accordingly, in the assessment proceeding pursuant to the search u/s. 153A for the year under consideration the Id. AO made addition of Rs.14,75,000/- u/s 69 of the Act on account of unexplained investment in purchase of immovable property. While doing so the Id. AO has not appreciated the fact that the assessee entered into an agreement for purchase of agriculture land from Shri Manoj Kumar on 27.01.2012 (APB 34-35) according to which assessee

paid Rs.13,25,000/- vide cheque no. 095454 dated 27.01.2012. This cheque amount reflected as debit to the bank account of assessee on 30.01.2012 (APB 27). Along with the sale agreement Shri Manoj Kumar has also given an affidavit dated 27.01.2012 (APB 36). It is not under dispute that the sale deed was executed (APB 39). Through, oversight in the sale deed the consideration of Rs.14,75,000/- has been stated to have been received in cash. The fact that assessee only paid Rs.1,50,000/- in cash on 27.01.2012 and balance Rs.13,25,000/- paid by cheque was explained to the AO in reply dated 09.12.2019 (APB 29-30). In support of the fact that Rs.1,50,000/- was paid by cash, cash book of the assessee as seized in search was provided by the AO in the remand proceedings (PB 16-19). Assessee also filed affidavit of Manoj Kumar dt. 17.6.2023 (PB 44) where he categorically stated that he has sold the land for Rs.13,25,000/- only which is paid to him by normal banking channel. At the stage of the first appeal the remand report was called for. In the remand proceedings the Id. AO noted that the contention of assessee is vague, baseless, unjust and unacceptable. The Id. CIT(A) based on the cash book submitted by the assessee noted that in the cash book Rs.1,50,000/- is paid with the description 'agriculture land Mehrampur being mitti filling & other expenses' and thus it is not paid to Shri Manoj Kumar. Though Rs.13,25,000/- has

been paid by cheque but registered deed shows payment of Rs.14,75,000/- in cash so the claim of the assessee that there is a typographical error was not considered even after the fact declared on affidavit of seller. As the amount in the sale agreement and sale deed being at difference amount the addition made was confirmed.

10. Based on the set of evidences and arguments advanced before us the bench noted that it is not under dispute the impugned land was purchased from Shri Manoj Kumar. The only dispute is that whether the assessee has paid the consideration in cash for Rs. 14,75,000/- in cash and Rs. 13,25,000/- by cheque coupled with the another expenditure in cash for Rs. 1,50,000/-. To this effect we have examined the documents relied upon and placed on record. The sale agreement placed on record at page 40 shows the overwriting with initial for an amount of Rs. 14,75,000/- which apparent to have been corrected from the figure of Rs. 13,25,000/-. The total sale consideration reflected in the sale deed including payment of mitting filling of Rs. 1,50,000/- is duly recorded in the cash book of the assessee. Both these payments if accounted for the purchase of property becomes total payment of Rs 14,75,000/- [ 13,25,000 paid to Shri Manoj Kumar and Rs. 1,50,000 incurred on the said land for mitti ]. Thus, merely

the sales consideration does not specify these two mode of payment there cannot be an addition for an amount of Rs. 14,75,000/- in the hands of the assessee, when the assessee has submitted the affidavit of the seller and the payment of expenditure incurred vide cash book placed on record. Thus, the contention of the assessee that she incurred mitti filling and other expenses through Shri Manoj Kumar and therefore this amount though may not paid to him but form part of the total consideration of the property so purchased. Thus, in the totality of the facts as it is available on record that Shri Manoj Kumar was paid Rs.13,25,000/- by cheque and Rs.1,50,000/- was incurred against mitti filling and other expenses. It is for this reason that there is a overwriting in the sale deed where the amount of Rs.13,25,000/- has been changed to Rs.14,75,000/-. The revenue has not brought on record the fact that a separate addition is also made in the hands of the assessee keeping a side of the explanation of the assessee. Merely in the sale deed it is written that amount has been paid in cash but it is only a typographical mistake in as much as amount Rs.13,25,000/- is concerned. If the sale agreement and the sale deed read conjointly then the facts are clearly reconcilable. The reliance placed by the Id. CIT(A) on the decision of Supreme Court in case of Ramjas Foundation & Anr. Vs. UOI where it is observed that a person who does not come to the court with clean hands/

whose conduct is blameworthy is not entitled to relief. Here the assessee based on the agreement to sale, sale deed, affidavit and cash book in fact supported the truth and this decision in fact be used in favour of the assessee. In fact the revenue even at the time of hearing of this appeal has not demonstrated the fact that even Shri Manoj Kumar was taxed for Rs. 13,25,000 and Rs. 14,75,000/- and thus in the absence of this evidence how can the evidence placed on record which support the contention of the assessee be ignored. Even the affidavit filed by the assessee support the contention as the contention record in the affidavit to be considered without controverting the same. This view is already held way back by the apex court in the case of Mehta Parikh & Co. Vs. CIT 30 ITR 181. In the light of the discussion so made here in above we see no reason to sustain the addition of Rs. 14,75,000/- made in the hands of the assessee and the same is directed to be deleted. Based on these observations ground no. 2 raised by the assessee is allowed. Since we have considered the appeal of the assessee on merits of her case the legal ground no. 1 taken by the assessee becomes educative in nature.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 04/06/2024.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated: -04/06/2024

\*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Smt. Rajni Gupta, Alwar
2. प्रत्यर्था / The Respondent- ACIT, Central Circle, Alwar
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 44/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar